

## Message Text

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W  
-----016609 081806Z /40

O R 081630Z SEP 77  
FM AMEMBASSY BRASILIA  
TO SECSTATE WASHDC IMMEDIATE 3619  
INFO AMCONSUL RIO DE JANEIRO  
AMCONSUL SAO PAULO  
AMCONSUL RECIFE

C O N F I D E N T I A L SECTION 1 OF 2 BRASILIA 7384

EXDIS

E.O. 11652: GDS  
TAGS: SHUM, CARR, PGOV, BR  
SUBJ: PROPOSAL TO DISCUSS PENDING HUMAN RIGHTS ISSUES WITH FOREIGN  
MINISTER SILVEIRA

REFS: A) RECIFE 173, B) RECIFE 181, C) BRASILIA 4465, D) RIO 3055  
E) BRASILIA 7216

1. SUMMARY. AS DISCUSSED WITH AMBASSADOR BEFORE HIS DEPARTURE FOR WASHINGTON, WE ARE CONSIDERING A PRESENTATION TO FOREIGN MINISTRY EXPRESSING US DISSATISFACTION WITH THE RESULTS OF THE PERNAMBUCO POLICE BOARD INQUIRY WHICH EXONERATED RECIFE POLICE OF ANY WRONG-DOING IN THE ARREST AND DETENTION LAST MAY OF US MISSIONARIES CAPUANO AND ROSEBAUGH. WE WOULD PROPOSE TO LEAVE A NOTE WITH AMBASSADOR JOAO HERMES DE ARAUJO, CHIEF OF FOREIGN MINISTRY'S WESTERN HEMISPHERE DIVISION, SUGGESTED TEXT OF WHICH FOLLOWS IN PARA 5 BELOW. OUR PRESENT THINKING IS THAT AMBASSADOR CRIMMINS WOULD FOLLOW UP AT A LATER DATE WITH FOREIGN MINISTER SILVEIRA, TO WHOM HE WOULD MAKE AN ORAL PRESENTATION AND LEAVE A COPY OF THE NOTE. EMBASSY WOULD APPRECIATE DEPARTMENT'S COMMENTS AND REACTION. END SUMMARY.

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2. THE EMBASSY CONSIDERS THE POLICE REPORT ON THE CAPUANO - ROSEBAUGH ARREST (REFTEL A) AND UNSATISFACTORY RESPONSE TO OUR DEMONSTRATED CONCERN OVER THE TREATMENT OF US NATIONALS BY THE POLICE IN RECIFE. IN BRIEF, WE AGREE WITH THE ASSERTION OF THE ARCHDIOCESE OF OLINDA AND RECIFE THAT THE INVESTIGATORY BOARD SOUGHT TO DEFEND THE POLICE AND PRISON SYSTEM RATHER THAN ATTEMPT AN IMPARTIAL INVESTIGATION OF CIRCUMSTANCES SURROUNDING THE ARREST

AND DETENTION OF THE TWO AMERICANS (REFTEL B). IN MAKING ITS JUDGMENTS, THE INVESTIGATORY BOARD APPEARS TO HAVE RELIED ENTIRELY ON THE STATEMENTS OF THE ARRESTING OFFICERS AND TO HAVE DISCOUNTED TOTALLY ROSEBAUGH'S AND CAPUANO'S DEPOSITIONS. THE REPORT ALLEGES THAT THE TWO CLERGYMEN DID NOT IDENTIFY THEMSELVES AS CLERGYMEN NOR REQUEST THAT INFORMATION OF THEIR DETENTION BE COMMUNICATED, AT LEAST UP TO THE TIME OF THEIR BOOKING AT THE POLICE STATION. IT IS SILENT ON THE MATTER OF THE THREE-DAY DETENTION PERIOD AT THE POLICE STATION, NOTWITHSTANDING ROSEBAUGH'S AND CAPUANO'S STATEMENT -- WHICH WE HAVE NO REASON TO DOUBT -- THAT THEY REQUESTED SEVERAL TIMES, ON MAY 15, 17 AND 18, THAT THE US CONSUL IN RECIFE BE INFORMED OF THEIR DETENTION. WE ALSO NOTE INTERNAL CONTRADICTION IN THE POLICE REPORT WHICH WAS POINTED OUT IN ARCHDIOCESE'S STATEMENT (REFTEL B): THE REPORT QUOTES POLICE STATION DESK OFFICER AS BEING UNAWARE THAT CAPUANO AND ROSEBAUGH WERE A MISSIONARY AND PRIEST, RESPECTIVELY, YET ELSEWHERE THE REPORT NOTES TWO ARRESTING OFFICERS' STATEMENT THAT THE ARREST WAS MOTIVATED BY THEIR BELIEF THAT THE TWO AMERICANS WERE NOT "BEHAVING IN A MANNER COMPATIBLE WITH THEIR ALLEGED SOCIAL STATUS" AS PRIEST AND MISSIONARY.

3. THUS, REPORT'S ONLY LEGITIMATE FINDING MAY BE THAT A REASONABLE CASE CAN BE MADE FOR SUSPICION AND TEMPORARY DETENTION OF THE TWO AMERICANS BECAUSE OF THEIR APPEARANCE, POSSESSION OF A LARGE NUMBER OF KEYS, AND FACT THAT THE PICTURES ON THEIR IDENTITY CARDS DID IN FACT DIFFER FROM THEIR APPEARANCE AT THE TIME OF ARREST. CONFIDENTIAL

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WITH RESPECT TO PHYSICAL VIOLENCE, ROSEBAUGH'S AND CAPUANO'S STATEMENTS BROADLY AGREE WITH THE POLICE REPORT THAT NO VIOLENCE (AS AGAINST INTIMIDATION) WAS PRACTICED DIRECTLY BY THE POLICE, BUT THE REPORT FAILS TO DEAL ADEQUATELY WITH THE TREATMENT OF THE MISSIONARIES WHILE HELD IN JAIL, INCLUDING THE FAILURE OF POLICE OFFICERS TO PROTECT THEM AGAINST OTHER INMATES. A RECENT CIRCULAR BY THE PERNAMBUCO SECRETARY OF PUBLIC SECURITY (REFTEL E) REQUIRING LOCAL POLICE TO REPORT PROMPTLY ALL ARRESTS OF PERSONS CLAIMING FOREIGN NATIONALITY, AND OFFERING TO ISSUE SPECIAL IDENTITY CARDS TO MISSIONARIES UPON REQUEST, MAY HELP AVOID FUTURE CASES OF THIS KIND. THESE MEASURES FALL FAR SHORT, HOWEVER, OF MEETING OUR FORMAL JUNE 1 REQUEST FOR DISCIPLINARY ACTION AGAINST THOSE INVOLVED IN THE ABUSE OF THE RIGHTS OF MESSRS. ROSEBAUGH AND CAPUANO (REFTEL C).

4. AT ISSUE HERE, OF COURSE, IS MORE THAN JUST ONE CASE OF ABUSIVE TREATMENT. THE FUNDAMENTAL QUESTION RELATES TO BRAZIL'S CONTINUED NON-COMPLIANCE WITH ITS OBLIGATIONS UNDER THE VIENNA CONVENTION, WITH PARTICULAR REFERENCE TO NOTIFICATION TO APPROPRIATE CONSULAR AUTHORITIES OF ARRESTS OF AMERICAN NATIONALS. AS DEPARTMENT AWARE, WE HAVE ANOTHER SUCH CASE OUTSTANDING -- THAT OF BERNARD HARRY BUTTS (REFTEL D).

5. PROPOSED ACTION - IF DEPARTMENT AGREES, EMBASSY WOULD DELIVER NOTE TO AMBASSADOR ARAUJO, CHIEF OF FOREIGN MINISTRY'S WESTERN HEMISPHERE DIVISION. AMBASSADOR CRIMMINS WOULD FOLLOW UP DURING A LATER CALL ON FOREIGN MINISTER SILVEIRA, MAKING AN ORAL PRESENTATION AND LEAVING A COPY OF THE NOTE. SUGGESTED TEXT OF PROPOSED NOTE FOLLOWS:

QUOTE: THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE MINISTRY OF EXTERNAL RELATIONS OF THE FEDERATIVE REPUBLIC OF BRAZIL AND HAS THE HONOR TO REFER TO THE EMBASSY'S NOTE NO. 164 OF JUNE 1, 1977, WITH REGARD TO THE ARREST AND DETENTION OF THOMAS MICHAEL CAPUANO AND LAWRENCE EDWARD ROSEBAUGH, BOTH CITIZENS OF THE UNITED STATES, AND TO CONFIDENTIAL

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THE MINISTRY'S NOTE NO. 41 DATED JUNE 2, 1977. IT IS OUR UNDERSTANDING THAT THE MINISTRY'S NOTE WAS INTENDED AS AN INTERIM REPLY TO THE EMBASSY'S NOTE UNDER REFERENCE.

SINCE THE DATE OF THE MINISTRY'S NOTE, THE POLICE SPECIAL INQUIRY COMMISSION ESTABLISHED TO EXAMINE THE MAY 15 ARRESTS AND DETENTION OF THE TWO US CITIZENS HAS COMPLETED ITS INVESTIGATION AND ITS RESULTS WERE MADE PUBLIC IN A REPORT ON AUGUST 7. A COPY OF THE REPORT WAS PROVIDED TO THE US CONSUL IN RECIFE BY

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W  
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O R 081630Z SEP 77  
FM AMEMBASSY BRASILIA  
TO SECSTATE WASHDC IMMEDIATE 3620  
INFO AMCONSUL RIO DE JANEIRO  
AMCONSUL SAO PAULO  
AMCONSUL RECIFE

C O N F I D E N T I A L SECTION 2 OF 2 BRASILIA 7384

EXDIS

THE SECRETARY OF PUBLIC SECURITY OF THE STATE OF PERNAMBUCO ON AUGUST 8. FURTHERMORE, IN A COMMUNICATION DATED AUGUST 15, THE SECRETARY OF PUBLIC SECURITY INFORMED THE US CONSUL THAT HE HAS OFFERED FOREIGN MISSIONARIES WORKING IN PERNAMBUCO SPECIAL IDENTITY CARDS ON REQUEST AND THAT HE HAS ASKED ALL POLICE AUTHORITIES UNDER HIS JURISDICTION, BY MEANS OF A CIRCULAR INSTRUCTION, TO COMMUNICATE THE DETENTION OF A FOREIGN NATIONAL, FOR WHATEVER REASON, TO HIM PERSONALLY AS WELL AS TO THE CONSULATE OF THE COUNTRY OF WHICH THE DETAINED PERSON CLAIMS TO BE A NATIONAL.

WHILE WELCOMING THE MEASURES TAKEN BY THE SECRETARY OF PUBLIC SECURITY, THE GOVERNMENT OF THE UNITED STATES, AFTER CAREFULLY CONSIDERING ALL THE EVIDENCE AVAILABLE TO IT, CONCLUDES THAT THE RESULTS OF THE INQUIRY, FULLY EXONERATING THE LOCAL POLICE AUTHORITIES OF ANY WRONGDOING IN THIS CASE, ARE HIGHLY DISAPPOINTING. IN THE US VIEW, THE FINDINGS AND SUPPORTING ARGUMENTATION OF THE REPORT DO NOT, IN ANY WAY, MEET THE CENTRAL CONCERNS EXPRESSED IN THE EMBASSY'S NOTE WITH RESPECT TO THE TREATMENT OF US NATIONALS. EXAMINATION OF THE REPORT OF THE PERNAMBUCO STATE AUTHORITIES LEAVES UNCHANGED THE US GOVERNMENT'S JUDGMENT, STATED IN THE NOTE, THAT -

(A) THE DETENTION OF THE TWO MEN WAS ARBITRARY IN THAT NO CHARGES  
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WERE PLACED AGAINST THEM AND THEY HAD NO OPPORTUNITY TO SECURE CONSULAR, LEGAL OR OTHER ADVICE OR ASSISTANCE, OR TO BRING THE MATTER OF THEIR DETENTION BEFORE THE JUDICIARY.

(B) STATE AUTHORITIES FAILED TO GIVE NOTICE WITHOUT DELAY TO THE DETAINEES OF THEIR RIGHTS UNDER ARTICLE 36(1)(B) OF THE VIENNA CONSULAR CONVENTION OF 1963, AND TO GRANT WITHOUT DELAY THE REPEATED REQUESTS OF THE AMERICAN PRISONERS THAT THE AMERICAN CONSULATE BE NOTIFIED, AS PROVIDED IN ARTICLE 36(B) OF THE VIENNA CONVENTION.

THE US GOVERNMENT, THEREFORE, CONTINUES TO HOLD THAT PERNAMBUCO POLICE OFFICIALS HANDLING THE ARREST AND DETENTION OF CAPUANO AND ROSEBAUGH FRUSTRATED THE RIGHT OF ACCESS OF THE US CONSULATE AND OF THE AMERICAN NATIONALS UNDER ARTICLE 36(A), AND THAT THE ACTIONS OF THESE OFFICIALS CONSTITUTE A CLEAR VIOLATION OF THE FUNDAMENTAL RIGHTS OF THE UNITED STATES AND ITS NATIONALS UNDER THE VIENNA CONVENTION.

THE EMBASSY WISHES ALSO TO BRING TO THE MINISTRY'S ATTENTION THE FACT THAT IT HAS NOT YET RECEIVED A REPLY TO ITS NOTE NO. 241 OF JULY 21, 1977, CONCERNING THE ARREST AND DETENTION IN RIO DE JANEIRO OF BERNARD HARRY BUTTS, AN AMERICAN CITIZEN, WHO WAS HELD IN DETENTION BY LOCAL AUTHORITIES FOR NINE DAYS BEFORE NOTIFICATION WAS MADE TO AMERICAN CONSULAR AUTHORITIES.

AS NOTED IN THE FOREGOING, THE GOVERNMENT OF THE UNITED STATES APPRECIATES THE MEASURES TAKEN BY THE AUTHORITIES OF THE STATE OF PERNAMBUCO. THE EMBASSY WOULD, HOWEVER, APPRECIATE DEFINITIVE REPLIES TO ITS NOTES UNDER REFERENCE, AS WELL AS INFORMATION CONCERNING ADDITIONAL STEPS THE NATIONAL AUTHORITIES ARE PREPARED TO TAKE BOTH IN REGARD TO THE CAPUANO - ROSEBAUGH MATTER AND FOR THE PREVENTION OF A RECURRENCE OF SUCH INCIDENTS ANYWHERE IN BRAZIL.  
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THE EMBASSY OF THE UNITED STATES OF AMERICA AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW TO THE MINISTRY OF EXTERNAL RELATIONS THE ASSURANCES OF ITS HIGHEST CONSIDERATION. END QUOTE.

6. COMMENT. EMBASSY STRONGLY FAVORS SOME APPROACH ALONG THESE LINES, IF ONLY TO EXERT FURTHER PRESSURE ON THE NATIONAL GOVERNMENT TO REIN IN STATE POLICE AUTHORITIES. WE RECOGNIZE, HOWEVER, THAT THE DEPARTMENT, IN THE INTEREST OF BROADER CONSIDERATIONS, INCLUDING THE SECRETARY'S FORTHCOMING VISIT IN WHICH HUMAN RIGHTS ISSUES UNDOUBTEDLY WILL BE DISCUSSED, MAY WISH TO FOREGO SUCH REPRESENTATIONS AT THIS TIME.  
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## Message Attributes

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